



4910-59M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA – 2013-0099]

Notice of Buy America Waiver

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of Buy America waiver.

SUMMARY: This Notice provides NHTSA’s finding that a waiver of the Buy America requirements is appropriate for the purchase of Can-Am Spyder motorcycles by the Wisconsin Department of Transportation (WisDOT), using Federal grant funds, for use as training vehicles in its Motorcycle Safety Program. NHTSA has determined that a waiver is appropriate because there are no comparable three-wheeled “trike” motorcycles produced domestically that use the same wheel configuration as the Spyder.

DATES: The effective date of this waiver is **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Written comments regarding this notice may be submitted to NHTSA and must be received on or before: **[INSERT DATE 10 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Written comments may be submitted using any one of the following methods:

- **Mail:** Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12-140, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.
- **Fax:** Written comments may be faxed to (202) 493-2251.
- **Internet:** To submit comments electronically, go to the Federal regulations website at <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Hand Delivery:** West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., between 9 am and 5 pm Eastern Time, Monday through Friday, except Federal holidays.

Instructions: All comments submitted in relation to this waiver must include the agency name and docket number. Please note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. You may also call the Docket at 202-366-9324.

FOR FURTHER INFORMATION CONTACT:

For program issues, contact Barbara Sauers, Office of Regional Operations and Program Delivery, NHTSA (phone: 202-366-0144). For legal issues, contact Andrew DiMarsico, Office of Chief Counsel, NHTSA (phone: 202-366-5263). You may send mail to these officials at National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

This Notice provides NHTSA's finding that a waiver of the Buy America requirements is appropriate for the Wisconsin Department of Transportation (WisDOT)

to purchase Can-Am Spyder model motorcycles (Spyders) using grant funds, authorized under 23 U.S.C. 402 (Section 402). *See* 23 U.S.C. 313. Section 2010 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy of Users (SAFETEA-LU) authorized NHTSA to award grant funds to States that implement programs to reduce the number of crashes involving motorcyclists. Public Law 109-54, 119 Stat. 1535 (23 U.S.C. 402 note, repealed by the Moving Ahead for Progress in the 21st Century Act, Pub. L. 112-141, Div. C, Title I, § 31109(g), 126 Stat. 757 (2012), recodified as amended at 23 U.S.C. 405(f)). Awarded funds must be used for the purpose of implementing and improving motorcyclist safety training and awareness programs, which includes, among other things, the procurement of practice motorcycles. *Id.*

The Buy America Act provides that NHTSA “shall not obligate any funds authorized to be appropriated to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or Title 23 and administered by the Department of Transportation, unless steel, iron, and manufactured products used in such project are produced in the United States.” 23 U.S.C. 313. However, NHTSA may waive those requirements if (1) their application would be inconsistent with the public interest; (2) such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent. 23 U.S.C. 313(b). In this instance, NHTSA has determined that a waiver is appropriate for the purchase of Can-Am Spyder three-wheeled motorcycles because there are no comparable trike motorcycles produced domestically that use the same wheel configuration as the Spyder.

The Can-Am Spyder is a three-wheeled motorcycle, commonly referred to as a “trike.” Unlike a traditional trike motorcycle, however, the Spyder does not utilize two rear wheels. Rather, the Spyder uses a chassis similar to an all-terrain vehicle (ATV) with two front wheels and one wheel in the rear. A typical Spyder RS model has 100 horse power @ 7500 RPM with a 5-speed transmission and a gross vehicle weight rating (GVWR) of 798 lbs. It is equipped with traction and stability control, anti-lock braking, and power steering. The starting purchase price for a Spyder RS model ranges from \$16,699 (for a 5-speed RS model with manual transmission) to \$19,999 (for an RS-S model with semi-automatic transition). Can-Am Spydery are considered a manufactured product under the Buy America Act and are assembled by Bombardier Recreational Products, Inc. (BRP) in Valcourt, Quebec, Canada.

WisDOT seeks a waiver to purchase Spyder model motorcycles for use as training vehicles in the Wisconsin Motorcycle Safety Program. WisDOT states that three-wheeled vehicles are becoming an increasingly popular style of motorcycle and WisDOT believes it is important to provide rider training on vehicles that reflect this particular configuration. According to WisDOT, the unique configuration of the Spyder vehicles, with two front wheels and one rear wheel, will offer riders a different configuration than the existing three-wheeled bikes in Wisconsin’s training program, all of which have two wheels in the rear. Thus, adding the Spyder to WisDOT’s existing training vehicles will provide riders with a wider variety of training options and help meet the needs of changing motorcycle rider demographics. WisDOT intends to purchase up to four Spyder trikes for this program at approximately \$20,000 per unit, for a total cost of \$80,000.

NHTSA is not aware of a trike with a comparable wheel configuration that is produced in the United States. In the trike market, Harley-Davidson, a domestic manufacturer, produces a three-wheeled motorcycle called the Tri-Glide. However, the Tri-Glide is distinguishable from the Spyder because of its wheel configuration with one wheel in front and two in the rear. WisDOT has already purchased two Tri-Glide trikes for its training program and is seeking the addition of the Spyder models to provide a distinctive training opportunity on an increasingly popular motorcycle configuration. The Spyder is the only full-sized three-wheel motorcycle configuration with two wheels in the front and one driver wheel at the rear. Accordingly, NHTSA's review has determined that there is no comparable, domestically produced three-wheeled motorcycle that fits the needs of WisDOT's Motorcycle Safety Program. However, the Agency invites public comment on the availability of domestically-produced models with similar wheel configurations to the Can-Am Spyder.

In light of the above discussion, and pursuant to 23 U.S.C. 313(b)(2), NHTSA finds that it is appropriate to grant a waiver from the Buy America requirements to WisDOT in order to purchase Can-Am Spyder model motorcycles. In accordance with the provisions of Section 117 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy of Users Technical Corrections Act of 2008 (Pub. L. 110-244, 122 Stat. 1572), NHTSA is providing this notice as its finding that a waiver of the Buy America requirements is appropriate. Written comments on this finding may be submitted through any of the methods discussed above.

Authority: 23 U.S.C. 313; Pub. L. 110-161.

Issued on: **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

O. Kevin Vincent,
Chief Counsel.

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